

**PUBLIC HEALTH ORDINANCE FOR
McHENRY COUNTY ILLINOIS**

McHENRY COUNTY DEPARTMENT OF HEALTH

**ARTICLE II
PUBLIC HEALTH NUISANCE**

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ARTICLE II – PUBLIC HEALTH NUISANCE

**SECTION II.1
DEFINITIONS**

“Barrier” means a fence, a wall, a building wall or a combination thereof, which completely surrounds the swimming pool and obstructs access to the swimming pool.

“Brush” means tree trunks, limbs, branches, and twigs.

“Ceremonial Fire (bonfire)” means an outdoor fire larger than three feet by three feet by three feet (3’x3’x3’) which is used for entertainment purposes as part of a specifically scheduled public or private event and excludes leaves, grass or shrubbery clippings or cuttings.

“Garbage” means organic waste resulting from preparation, processing, handling and storage of food and all decayed or spoiled food from any source.

“Habitable Structure” means any structure with electric and heat intended to be used for living, sleeping, eating, or assembly purposes including but not limited to residences, multifamily dwellings, churches, schools, food facilities and industrial buildings.

“Hot Tub” see definition of spa.

“In-ground pool” see definition of swimming pool.

“Landscape Waste” means all accumulation of grass or shrubbery cuttings, leaves, flowers and weeds.

“Litter” means any discarded, used or unconsumed substance or waste. Litter may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, motor vehicle parts, furniture, oil, carcass of dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste, or anything else of an unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

“Manure” means the excreta of livestock and poultry, which may contain some spilled feed, bedding or litter.

“Natural Barrier” means a non-seasonal lake, pond or stream greater than 20 feet in width.

“Neighboring residence” means a one or two-family dwelling or a one-family townhouse not more than three stories in height, situated on improved property within 500 feet of a residential swimming pool.

“Non-habitable Structure” means any structure not identified as habitable as defined and would include but is not limited to garages, sheds, barns, and swimming pools.

“Noxious Weed” means Canada thistle (*Cirsium arvense*), perennial Sowthistle (*Sonchus arvensis*), Musk Thistle (*Carduus nutans*), and perennial members of the sorghum genus including Johnson grass

(Sorghum halepense), and Sorghum alnum, Kudzu (Pueraria labata) and within the corporate limits of cities, villages, and incorporated towns, Giant ragweed (Ambrosia trifida L.) and Common ragweed (Ambrosia artemisiifolia L.).

“Offal” means the intestines and discarded parts from the slaughter of animals.

“Open Burning” means the combustion of any matter in such a way that the products of the combustion are emitted to the open air without originating in or passing through equipment for which a permit could be issued under the provisions of the Environmental Protection Act.

“Recreational Fire” means a temporary outdoor fire for warmth, cooking for human consumption, or for non-ceremonial purposes where the fire is not larger than three feet by three feet by three feet (3’x3’x3’) and excludes leaves, grass or shrubbery clippings or cuttings.

“Residential” means that which is situated on the premises of a detached one or two-family dwelling or a one-family townhouse not more than three stories in height.

“Spa – portable, non-portable, hot tub” means a non-permanent structure intended for recreational bathing in which all controls, water-heating and water-circulating equipment are an integral part of the product.

“Structure” means the results of a man-made change to the land constructed on or below the ground, including the construction, reconstruction or placement of a building or any addition to a building; installing a manufactured home on a site; preparing a site for a manufactured home or installing a recreational vehicle or travel trailer on a site for more than one hundred eighty (180) consecutive days.

“Swimming Pool” means any structure intended for swimming or recreational bathing that contains water over 24 inches deep. This includes in-ground, aboveground and on-ground swimming pools, hot tubs and spas.

“Swimming pool – indoor” means a swimming pool which is totally contained within a structure and surrounded on all four sides by walls of said structure.

“Swimming pool – outdoor” means any swimming pool, which is not an indoor pool.

SECTION II.2

INTENT AND PURPOSE:

The purpose of this Ordinance is to control and prevent nuisances of public health significance.

SECTION II.3 REQUIREMENTS

The following are declared public health nuisances prejudicial to the public health:

- II.3.1** To cause or suffer the carcass of any animal or any offal or filth to be collected, deposited or to remain in any place to the prejudice of others. Livestock waste disposed of on agriculturally zoned land in compliance with State and local laws, ordinances, or regulations is exempt. Animal carcasses shall be properly disposed of within twenty-four (24) hours of a death of an animal.
- II.3.2** Allowing accumulations of litter; human, animal, industrial, noxious or offensive waste; Provided, that, acceptable storage of livestock manure on a farm is permitted when this storage is in compliance with State and local laws, ordinances, and regulations.
- II.3.3** Maintaining garbage containers, which are not vermin and rodent proof.
- II.3.4** Allowing any infestation in a structure or on a property of pests or vermin that may be involved in transmission of communicable diseases or failing to remove conditions in a

structure or on a property that may permit such infestation.

- II.3.5** Failing to eradicate all noxious weeds within 150 feet of any property line.
- II.3.6** Allowing occupancy of a building that is an exposed public hazard as a source of filth or in a condition prejudicial to the health and safety of the public.
- II.3.7** Failing to remove or seal unoccupied buildings that are an exposed public hazard, as a source of filth or in a condition prejudicial to the health and safety of the public in such a manner as to prevent entry.
- II.3.8** Failing to remove vehicles, refrigerators, freezers, stoves, and similar equipment, which have been abandoned to the potential peril of persons from the property.
- II.3.9** Offering used mattresses, swimsuits, wigs, and other personal items for sale to the public unless these items are sanitized as approved by the Health Authority.
- II.3.10** Failing to provide a potable water supply sufficient in quantity and pressure to adequately serve all plumbing fixtures therein, in any building in which people live, work or assemble.
- II.3.11** Operating a tanning facility without a valid permit issued by the Illinois Department of Public Health contrary to the provisions of the Illinois Tanning Facility Permit Act or the Illinois Department of Public Health Tanning Facilities Code.
- II.3.12** Operating a tattoo and/or body piercing establishment without a valid registration issued by the Illinois Department of Public Health contrary to the provisions of the Illinois Tattoo and Body Piercing Establishment Registration Act or the Illinois Department of Public Health Body Art Code.

SECTION II.4

OPEN BURNING OF LANDSCAPE WASTE

INTENT AND PURPOSE: Whereas, open burning creates a risk of losses due to fire and impairs air quality, regulation of open burning is necessary to protect the public health, safety, and welfare.

REQUIREMENTS

II.4.1 Exemptions

- A)** Sections II.4.2, A & B; II.4.3, B, 1-3; and II.4.4, B shall not apply to prescribed burns associated with ecologic restoration or natural landscape management, any burning of landscape waste for purposes of habitat reclamation, or firefighter training.
- B)** Sections II.4.2, A & B; II.4.3, B, 1-3; and II.4.4, B shall not apply to the burning of brush for purposes of domestic fireplaces or cooking or external fireplaces, or to self-contained outdoor wood-burning devices or fireplaces.
- C)** Sections II.4.2, A & B; II.4.3, B, 1-3; and II.4.4, B shall not apply to the open burning of brush for purposes of recreational fires.
- D)** Sections II.4.2, A & B; II.4.3, B, 1-3; and II.4.4, B shall not apply to the open burning of brush for purposes of ceremonial fires or bonfires provided that notice of any ceremonial fire or bonfire has been given to the fire protection district or fire department serving the area where the fire is to take place and a permit has been obtained from the McHenry County Department of Health. Failure to obtain a permit from the McHenry County Department of Health prior to conducting a ceremonial

fire utilizing brush shall be deemed a violation of this article. Failure to notify the applicable fire protection district or fire department and obtain permission prior to conducting a ceremonial fire utilizing brush shall be deemed a violation of this article.

- E) Section II. 4.3, B, 1 shall not apply where the fire is located five hundred feet (500') or greater from a habitable structure.

II.4.2 Prohibition

- A) Open burning of landscape waste shall not take place within one hundred feet (100') feet of a habitable structure.
- B) Open burning of landscape waste shall not take place less than fifty feet (50') from any structure that is not habitable.
- C) The burning of manure, garbage, litter or any materials other than landscape waste and/or brush is prohibited on any property in McHenry County.
- D) The Chairman of the County Board shall have the authority to prohibit all open burning of landscape waste in the event of emergencies that require shifting of staff priorities or conditions that may represent significant potential for fire safety issues.

II.4.3 Restrictions

Any open burning in the County of McHenry shall be in accordance with the restrictions enumerated below:

- A) The open burning of landscape waste shall only occur on the property upon which the landscape waste was generated. The burning of any materials other than landscape waste is prohibited.
- B) The following restrictions upon the open burning of landscape waste on the property upon which it was generated shall prevail:
 - 1) Burning is permitted only on weekends, between dawn and dusk, during the months of October, November, April and May.
 - 2) Burning is not permitted when the wind is in excess of ten (10) miles per hour.
 - 3) Burning is not permitted of any material other than dry landscape waste and/or brush.
 - 4) Burning is not permitted on public or private roads, alleys, sidewalks or easements.
 - 5) Burning is not permitted when it is a visibility hazard on roadways, railroad tracks or airfields.

II.4.4 Conditions and Limitations of Open Burning

- A) All open burning must be supervised by an individual at least 18 years of age until the fire is extinguished.
- B) A fire extinguisher or garden hose or water source shall be available at the burning site.
- C) It is the responsibility of the individual conducting the burning and the owner of the property to comply with all conditions upon burning as noted above during any burning.
- D) It shall be unlawful for any person to cause or allow any open or uncontrolled burning of landscape waste and/or other materials in violation of the above regulations and restrictions.
- E) Any ceremonial fire (bonfire) or recreational fire must be supervised by an individual at least 18 years of age or older.
- F) The Chairman of the County Board shall have the authority to waive all or part of the requirements of this Ordinance in the event of emergencies resulting from natural phenomenon or civil strife.

II.4.5 Enforcement, Violations and Penalties

- A)** McHenry County Department of Health shall be primarily responsible for the enforcement of this Ordinance. Any enforcement officer of the McHenry County Department of Health, law enforcement agency, fire department or fire protection district is hereby authorized to enforce the provisions of this article.
- B)** Any person who violates any provision of this article shall be punished by a fine of one hundred dollars (\$100) for a first time offense and a fine of up to one thousand dollars (\$1000) for offenses subsequent to the first offense. The burning of any toxic material and any prior convictions under this article shall be considered factors in aggravation for purposes of the assessment of any fines.

This Ordinance does not supersede any requirements of a government entity that may be more restrictive.

SECTION II.5

BARRIERS FOR RESIDENTIAL SWIMMING POOLS, SPAS AND HOT TUBS

INTENT AND PURPOSE: The provisions of this document shall control the design of barriers for residential swimming pools, spas and hot tubs. These design controls are intended to provide protection against potential drowning and near drowning to children under the age of five (5) by restricting access to swimming pools, spas and hot tubs.

This Section applies to all residential swimming pools, spas and hot tubs in McHenry County unless a more stringent local Ordinance exists.

REQUIREMENTS

- II.5.1 Usage:** In no case shall a swimming pool, hot tub or spa be put into use until it is in compliance with the following requirements and any applicable building code.
- II.5.2 Outdoor swimming pool:** An outdoor swimming pool, including an in-ground, aboveground or on-ground pool, hot tub or spa, shall be provided with a barrier which shall comply with the following:
- II.5.3 Barrier:** The top of the barrier shall be at least 48 inches above grade measured on the side of the barrier which faces away from the swimming pool. The maximum vertical clearance between grade and the bottom of the barrier shall be four (4) inches measured on the side of the barrier which faces away from the swimming pool. Where the top of the pool structure is above grade, such as an aboveground pool, the barrier may be at ground level, such as the pool structure, or mounted on top of the pool structure. Where the barrier is mounted on top of the pool structure, the maximum vertical clearance between the top of the pool structure and the bottom of the barrier shall be four (4) inches.
- II.5.4 Natural Barrier:** The barrier requirements are waived for the portion of the pool/spa/hot tub facing the natural barrier. On all other sides of the property, the barrier must extend to the legal (where established) or normal water level.
- II.5.5 Openings in barrier:** Openings in the barrier shall not allow passage of a four (4) inch diameter sphere.
- II.5.6 Solid barriers:** Solid barriers which do not have openings, such as a masonry or stone wall, shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.

- II.5.7 Barrier horizontal and vertical members less than 45 inches:** Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, spacing between the vertical members shall not exceed 1 ¾ inches in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1 ¾ inches in width.
- II.5.8 Barrier horizontal and vertical members 45 inches or more:** Where the barrier is composed of horizontal and vertical members of 45 inches or more, spacing between vertical members shall not exceed four (4) inches. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1 ¾ inches in width.
- II.5.9 Mesh size for chain link:** Maximum mesh size for chain link fences shall be a 1 ½ inch square unless the fence is provided with slats fastened at the top or bottom which reduce the openings to no more than 1 ¾ inches.
- II.5.10 Barrier diagonal members:** Where the barrier is composed of diagonal members, such as a lattice fence, the maximum opening formed by the diagonal members shall be no more than 1 ¾ inches.
- II.5.11 Access gates:** Access gates shall comply with the requirements of sections II.5.1 through II.5.10, and shall be equipped to accommodate a locking device. Pedestrian access gates shall open outwards away from the pool and shall be self-closing and have a self-latching device. Gates other than pedestrian access gates shall have a self-latching device. Where the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate, (a) the release mechanism shall be located on the pool side of the gate at least three (3) inches below the top of the gate and (b) the gate and barrier shall have no opening greater than ½ inch within 18 inches of the release mechanism.
- II.5.12 An aboveground pool structure used as a barrier:** Where an aboveground pool structure is used as a barrier or where the barrier is mounted on top of the pool structure, and the means of access is a ladder or steps then (a) the ladder or steps shall be capable of being secured, locked or removed to prevent access or (b) the ladder or steps shall be surrounded by a barrier which meets the requirements of II.5.1 through II.5.11. When the ladder or steps are secured, locked, or removed, any opening created shall not allow the passage of a 4-inch diameter sphere.
- II.5.13 Moat used to obtain clearance:** Where a moat is used to obtain the 48 inch clearance from ground surface to top of pool, it shall also be 48 inches from the outside rim of the moat to the top of the barrier (or rim of the pool).
- II.5.14 Prohibited locations:** Barriers shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the barriers.
- II.5.15 Exemptions:**
- a) A spa or hot tub with a solid lockable safety cover which complies with ASTM F1346-91 (Replaces ES 13-89) listed below shall be exempt from the provisions of this document. Swimming pools with safety covers shall not be exempt. ASTM F1346-91 (Replaces ES 13-89). Emergency performance Specification for Safety covers and labeling requirements for covers for Spas and Hot Tubs.
 - b) Swimming pools/spas/ hot tubs located greater than 500 feet from neighboring residence and that have been in existence prior to January 1, 1992 shall be exempt from all requirements of II.5., until such time that a neighboring residence is located within 500 feet of the existing swimming pool.
 - c) The mesh size for chain link barriers in existence prior to October 18, 1994, that are no

larger than 2 ¼ inches square, providing an opening of no more than 3 1/5 inches shall be exempt from Section II.5.9.

- d) Swimming pools/spas/hot tubs that have been in existence prior to January 1, 1992 and for which there exists an occupancy certificate issued by the County after August 21, 1990. This exemption shall only apply to pools, spas, and hot tubs that have been issued an occupancy certificate under the 1990 BOCA and that continue to be in compliance with the provisions of the 1990 BOCA National Building Code.

II.5.16 Variances:

- a. **Intent:** it is the intent of Section II.5 of the McHenry County Public Health Ordinance that all swimming pools, spas and hot tubs have an effective barrier to discourage access of youngsters (less than 5 years of age). However it is recognized that unique circumstances may exist that would preclude immediate compliance with all parts of Section II.5 for swimming pools/spas/hot tubs in existence prior to January 1, 1992.
- b. **Standards for a Variance:** Variations from the regulations of this ordinance may be granted in each of the following instances:
 - 1. For the swimming pools/spas/hot tubs built prior to the effective date of this Ordinance and that require measurement specifications as set forth in this Ordinance, may be granted a variance provided that the “as built” configuration does not deviate by more than 15% of the measurement specifications. The Petitioner shall be exempt from the notice requirements of Section II.5.16C
 - 2. Furthermore, a Variance may be granted where evidence is presented and demonstrates:
 - i. The swimming pools/spas/hot tubs have been built prior to the effective date of this Ordinance.
 - ii. The swimming pools/spas/ hot tubs are located 200 feet to 500 feet from a neighboring residence or less than fifty feet from a natural barrier.
 - iii. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located

The Petitioner shall provide notice as set forth in II.5.16C

- c. **Notice:** The Petitioner shall notify by means of certified mail-return receipt requested, all of the most recent real estate taxpayers of record of all property abutting the property designated in the petition for a variation. If said property designated in the Petition is bounded by a public road or street, alley or any other public way, such notice shall be sent to all of the most recent real estate taxpayers abutting the public road or street, alley or any other public way directly across the Petitioner’s property. All such notices shall be mailed not more than thirty (30) days nor less than fifteen (15) days in advance of filing the petition for variance. The Petitioner shall file a sworn affidavit containing a copy of the notice, the names and addresses of all taxpayers entitled to notice and those who received notice.
- d. **Issuance and Time Period:** The Department shall review the variation petition based on the Standards for a Variance. The Department shall, within 10 days from the date of filing the petition, approve or disapprove the petition, notifying the petitioner to that effect in writing. A variance shall be valid for five (5) years.

e. **Recording:** Where a petition is approved for a variance within 10 days of said approval, the Petitioner shall file for record with the recorder's office a notice of variance which shall prescribe the following information.

1. Grantee(s) name – Owner(s)
2. Grantee(s) Address
3. Legal Description of the Property
4. Property Index Number
5. A statement of Variance and its Duration
6. Name and Address of Preparer

The Petitioner shall submit to the Department a certified copy of the notice of variation within 10 days of its recording.

f. **Appeals:** Appeals may be made in accordance with Article I of the McHenry County Public Health Ordinance.

II.5.17 Enforcement: The Planning and Development Department and any duly authorized member or representative thereof shall enforce all of the provisions of Section II.5 et seq. notwithstanding, those enforcement provisions set forth in Article I of the Public Health Ordinance.